No. 14,475

IN THE

United States Court of Appeals

For the Ninth Circuit

GERALD A. BROWN, Regional Director of the Twentieth Region of the National Labor Relations Board, for and on behalf of The National Labor Relations Board,

Appellant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, and BELL TELEPHONE COMPANY OF NEVADA, a corporation,

Appellees.

Appeal from the United States District Court for the Northern District of California, Southern Division.

BRIEF OF APPELLEES.

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BRIEF OF APPELLEES.

STATEMENT OF JURISDICTION AND THE STATUTE INVOLVED.

Appellees, *THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY* and *BELL TELEPHONE COMPANY OF NEVADA* (hereinafter jointly referred to as

the "Company" or the "Employer") agree with Appellant's statements of jurisdiction and of the statute involved.

STATEMENT OF THE CASE.

The Company does not agree with Appellant's statement of the case. Appellant's statement ignores the key factual considerations in this dispute, i.e., whether separate toll maintenance units are appropriate for collective bargaining purposes.

The Company's answer to the petition was not, as stated by Appellant, limited to "denying that any unfair labor practices had been committed because of its good faith belief that units of toll maintenance employees no longer were appropriate for collective bargaining purposes" (Appellant's Br., p. 4). The Company expressly denied that the claimed toll maintenance units "are or have been at any time since on or about May 29, 1953, appropriate for purposes of collective bargaining" (R. 38, 43).[1]

Appellant's statement of the case omits the following material facts expressly found by the National Labor Relations Board:

1. The pattern of bargaining under the certifications of 1940, 1944 and 1949 "satisfied none of the parties" (R. 57).

2. The fourteen-, nine- and five-year-old unit determinations have "produced much bargaining strife, provoked the filing of many grievances and the making of many job classification studies, and caused

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[1]References to the printed Transcript of Record are designated "R."

considerable expense and inconvenience to the contracting parties'' (R. 57-58).

3. ''Within the past 10 years, steadily accelerated changes in the technology of the Employer's communications and maintenance equipment; integrated 'toll' and 'exchange' developments in its telephone service to meet the rapid postwar increase of population on the West Coast; the introduction of new communications services with integrated dual 'toll' and 'exchange' components; the increase in the number and complexity of Federal and State regulations; and the integration of 'toll' and 'exchange' functions performed by the Employer's telephone equipment operating and maintenance employees have produced a situation where today the words 'toll' and 'exchange' are no longer simple geographical definitions, but, on the contrary, complex geographical, economic, and legal concepts, easier to exemplify than to define, and developed for purposes unconnected with collective bargaining'' (R. 59-61).

4. ''Equipment which includes automatic switching devices, vacuum tube repeaters and carrier equipment, and tandem switching systems serve to obliterate the earlier 'toll' and 'exchange' distinctions by permitting 'exchange' calls over longer distances and by performing dual 'toll' and 'exchange' functions, frequently automatically'' (R. 59).

5. ''Today the Employer's employees frequently work in groups on the Employer's equipment in accordance with their knowledge of particular items of

equipment, rather than in accordance with any distinctive 'toll' or 'exchange' skills they may have. In the field of radio-telephone, for example, 'central office' employees, represented by the Intervenor, work on the mobile units, while both 'central office' employees, represented by the Intervenor and 'toll maintenance' employees, represented by the Petitioner, work on the stationary transmitters and receivers" (R. 60-61).

6. "Moreover, it now clearly appears that, however distinctive the skills of 'toll maintenance' and 'central office' employees may have been in early days of less developed operations, the present worth of the Employer's skilled telephone maintenance employees lies in their ability to handle highly complicated, technical, and integrated circuits and equipment however used, rather than in any special 'toll' or 'exchange' aptitudes, if any, that they may happen to possess" (R. 62-63).

7. "Although in the earlier cases [the certifications of 1940, 1944 and 1949] the Board noted that 'without special training, central office employees cannot perform toll maintenance work, and vice versa,' today, in view of the Employer's complex equipment, its telephone equipment maintenance employees are jointly trained on the basis of each item of equipment, rather than on the basis of any generalized 'toll' or 'exchange' concept thereof" (R. 63).

8. The system-wide unit of toll maintenance employees sought by ORTT (Order of Repeatermen and

Toll Testboardmen, the complaining union) was found inappropriate by the Board on March 17, 1954, because such a unit would "continue the very sort of unit indefiniteness, indefinability, and variability" which existed under the old certifications (R. 62).

These are facts found by the National Labor Relations Board on March 17, 1954 (R. 52-64), not in 1940, not in 1944, nor in 1949.

Appellant further omits from his statement of the case the fact that prior to recognition of Communications Workers of America, CIO, on April 27, 1954, as bargaining agent for employees in a unit of all plant craftsmen in the Company's Northern California and Nevada Area, including the toll maintenance employees in that area, the Company found by a check of its records that 78.9 per cent of the 7677 employees in that unit had selected CWA as their representative (R. 193).

QUESTIONS PRESENTED.

1. Did the District Court abuse its discretion in denying the interlocutory injunction?

2. Did the District Court properly conclude, on the basis of unrefuted findings of the Board made on March 17, 1954, that the present appropriateness for collective bargaining purposes of the claimed units had not been established?

3. In the absence of evidence that the claimed units are today appropriate, did the District Court properly hold that it was unable to find reasonable cause to believe

that Appellees violated an act which only required them to bargain with a union representing employees in an appropriate unit?

4. Whether or not the claimed units are appropriate, did the District Court properly hold that it was unable to find reasonable cause to believe that a violation of the Act has occurred in view of Appellees' good faith reliance upon findings made by the Board on March 17, 1954?

SUMMARY OF ARGUMENT.

In an appeal from a denial of an interlocutory injunction, the Appellant must demonstrate that there is no reasonable basis for the District Court's decision.

To establish even a prima facie case, Appellant had to offer evidence that the claim of the complaining union encompassed representation of employees in a unit presently appropriate for collective bargaining. As Appellant failed to do this, the record shows no basis on which he would be entitled to an injunction.

As the unrefuted evidence shows the claimed bargaining units are inappropriate for that purpose today, the District Court was not only reasonable in denying but was compelled to deny the interlocutory injunction.

When, as here, an employer reasonably relies on findings of the National Labor Relations Board in refusing to recognize a union as representative of employees in a unit which seems to be inappropriate, its refusal is not a violation of the Act.

By reason of the foregoing, there is no reasonable cause to believe that a violation of the National Labor Relations Act has occurred. The District Court properly denied the requested injunction and its judgment should be affirmed.

ARGUMENT.

1. IN AN APPEAL FROM A DENIAL OF AN INTERLOCUTORY INJUNCTION, THE APPELLANT MUST DEMONSTRATE THAT THERE IS NO REASONABLE BASIS FOR THE DISTRICT COURT'S DECISION.

The denial or granting of the injunction requested under section 10 of the National Labor Relations Act, as amended (hereinafter referred to as the "Act"),[2] depends on the reasonable exercise of the District Court's discretion.

In considering an injunction under section 10(1) of the Act, the court in *United Brotherhood of Carpenters, Etc. v. Sperry* (10 Cir. 1948) 170 F.2d 863, said (p. 869):

> "It is not the inflexible duty of the court in every case of this kind to grant a temporary injunction to remain in force and effect until the Board makes its final adjudication of the charge of unfair labor practice. The court has a reasonable permissive range for the exercise of its discretion in the granting of injunctive relief appropriate to the particular circumstances presented, or in withholding its writ. Hecht Company v. Bowles, 321 U.S. 321, 64 S.Ct. 587, 88 L.Ed. 754."

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[2] 29 U.S.C. 141 et seq.

The *Sperry* case is quoted and followed in *Le Baron v. Los Angeles Build. & Constr. Tr. Council* (S.D. Cal. 1949) 84 F.Supp. 629, affirmed (9 Cir. 1950) 185 F.2d 405.

In *Brown v. National Union of Marine Cooks and Stewards* (N.D.Cal. 1951) 104 F.Supp. 685, upon an application for an injunction under section 10(j) the court said (pp. 690-691):

> "The injunction does not issue as a matter of course. When there is shown a sufficient factual basis, there is in the court a reasonable permissive range of discretion as to whether this relief will or will not be granted."

On an appeal, therefore, from the exercise of such discretion "the Government must demonstrate that there was no reasonable basis for the District Judge's decision" (*United States v. W. T. Grant Co.* (1953) 345 U.S. 629, 634).

The rule is well stated by this court in *Bankers' Utilities Co. v. National Bank Supply Co.* (9 Cir. 1931) 53 F.2d 432, as follows (p. 433):

> "By an application for a temporary injunction, the discretion of the court is appealed to, and, unless the showing presented on undisputed facts is such as to entitle the moving party as a matter of law to the writ sought, the decision of the trial judge may not be disturbed. That rule needs no citation of authorities to support it."

See also *Bowles v. Huff* (9 Cir. 1944) 146 F.2d 428.

Unless, therefore, Appellant has demonstrated a lack of any reasonable basis in the record for the denial of the

injunction, and an abuse of discretion by the District Court, the judgment must be affirmed.

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2. TO ESTABLISH EVEN A PRIMA FACIE CASE, APPELLANT HAD TO OFFER EVIDENCE THAT THE CLAIM OF THE COMPLAINING UNION ENCOMPASSED REPRESENTATION OF EMPLOYEES IN A UNIT PRESENTLY APPROPRIATE FOR COLLECTIVE BARGAINING. AS APPELLANT FAILED TO DO THIS, THE RECORD SHOWS NO BASIS ON WHICH HE WOULD BE ENTITLED TO AN INJUNCTION.

Appellant relies heavily on the fact that the Company's refusal to recognize the ORTT as a bargaining agent is undisputed. The Board has held, in dismissing a refusal-to-bargain charge, that the mere refusal by an employer of a union claim to recognition is not ipso facto a violation of the Act (*Walmac Co.* (1953) 106 NLRB No. 244, 33 LRRM 1019, 1020).

The National Labor Relations Act, as amended, provides that "It shall be an unfair labor practice for an employer * * * to refuse to bargain collectively with the representatives of his employees, *subject to the provisions of section 9(a)*"[3] (29 U.S.C. 158(a)).

Section 9(a) of the Act provides: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees *in a unit appropriate for such purposes,* shall be the exclusive represent-

[3]Emphasis added unless otherwise indicated.

atives of all the employees in such unit * * *'' (29 U.S.C. 159(a)).

The Board has held in a situation analogous to the circumstances here that ''it was necessary that the General Counsel, to establish his *prima facie* case, produce evidence that the representation claim of the [complaining union] did encompass employees *within an appropriate unit.* This the General Counsel failed to do. Accordingly, we shall dismiss the complaint * * *'' (*William Penn Broadcasting Company* (1951) 93 NLRB 1104, 1106, 27 LRRM 1532, 1533).

The only evidence offered by Appellant of the appropriateness of the toll maintenance units was three early certifications, one in California in 1940, one in Washington in 1944, and a third in Oregon in 1949.

There are many cases having to do with the effective duration of a certification, but the accepted rule is well stated in *National Labor Rel. Bd. v. Globe Automatic Sprinkler Co.* (3 Cir. 1952) 199 F.2d 64, after reviewing many Board and court cases, as follows (p. 69):

> ''In sum, it is apparent that the overwhelming weight of authority, expressed in decisions by the National Labor Relations Board and by the courts, is (1) that 'in the absence of unusual circumstances' a 'reasonable period' must elapse after the certification of the union before the employer can refuse to bargain with it; and (2) 'reasonable period' has been defined as 'customarily' or 'usually' for 'about one year'.''

Thus the Board and the courts have been quick to find improper a refusal to bargain which violates the ''one-year certification rule.'' Though the rule has no applica-

tion here, many of the principal cases relied upon by Appellant have to do with that rule.[4]

To span the fourteen, nine and five years since the certifications here, Appellant argues for a "presumption of continued appropriateness" (Appellant's Br., p. 17). Any such presumption was nullified by the Appellant's own evidence, the Board decision of March 17, 1954 (Pet. Exh. 19, R. 101, set out as Exh. B at R. 52-64).

Appellant does not and cannot question the fact that changing conditions affect the continuing validity of certifications (Appellant's Br., p. 19). In fact the Board stated in *Pacific Telephone and Telegraph Company* (1944) 58 NLRB 1042 (Appellant's Br., p. 6) at page 1048:

> "We have frequently stated that what employees constitute an appropriate bargaining unit depends upon all the circumstances *existing at a given time.*"

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[4]*Pittsburgh Glass Co. v. Board* (1941) 313 U.S. 146, Appellant's Br. pp. 17, 18 (refusal immediately after certification);
National Labor Relations Bd. v. Prudential Ins. Co. (6 Cir. 1946) 154 F.2d 385, Appellant's Br., pp. 18, 19 (refusal within three and one-half months of certification);
Foreman & Clark, Inc. v. NLRB (9 Cir. Jul. 30, 1954) ..... F.2d ....., 34 LRRM 2697, Appellant's Br., pp. 18, 19 (refusal five weeks after certification);
Packard Co. v. Labor Board (1947) 330 U.S. 485, Appellant's Br., p. 18 (refusal immediately after certification);
Board v. Hearst Publications (1944) 322 U.S. 111, Appellant's Br., p. 18 (refusal immediately after certification);
National L. Relations Board v. Appalachian E. Power Co. (4 Cir. 1944) 140 F.2d 217, Appellant's Br., p. 19 (refusal less than ten weeks after certification);
Valley Mould & Iron Corp. v. National Labor R. Board (7 Cir. 1940) 116 F.2d 760, Appellant's Br., p. 19 (refusal within three months of certification);
National Labor Relations Board v. S. H. Kress & Co. (6 Cir. 1952) 194 F.2d 444, Appellant's Br., p. 19 (refusal immediately after certification);
National Labor Relations Board v. National Mineral Co. (7 Cir. 1943) 134 F.2d 424, Appellant's Br., p. 19 (refusal immediately after certification).

In *Fruehauf Trailer Company* (1949) 87 NLRB 589, the Board said (p. 591):

> "We do not agree with the Intervenor that, because of the long history of multi-plant bargaining, a separate unit is inappropriate. While we place great weight on collective bargaining history, we will not make it the determinative factor in deciding the unit issue where, as here, *new and significant changes in the Employer's organization and operations have occurred since the date of the Intervenor's certification which dictate a contrary result.*"

See also:

The Kroger Company (1950) 88 NLRB 243;

General Motors Corporation, Oldsmobile Division (1942) 45 NLRB 11, 14;

Jones & Laughlin Steel Corporation (1941) 37 NLRB 366, 371.

Conceding that changed conditions may have sapped the vitality of these old certifications, Appellant argues that nevertheless the Company could not take "on itself first to disregard the existing certifications" (Appellant's Br., p. 19). He quotes the opinion of the Court of Appeals for the Sixth Circuit in *National Labor Relations Bd. v. Prudential Ins. Co.* (1946) 154 F.2d 385, 390 (Appellant's Br., pp. 19-20). The court said:

> "Until such changed conditions are reflected by a later ruling of the Board * * * a valid existing certification must be honored."

In that case a union was certified on February 5, 1943, and the challenged refusal to bargain occurred on May 25, 1943. As a defense the employer pleaded a later

Board decision, rendered on June 5, 1943, which questioned the propriety of the February certification. The court found two answers to this defense. First, the employer's alleged unlawful refusal occurred before the ruling relied upon. Second, the court held that the one-year certification rule should apply in any event.

Compare the facts in this record.

First, the Company's acts of which complaint is made occurred almost a month after the Board decision of March 17, 1954, and such action was taken in express reliance upon and only after careful study of that decision (R. 151-153, 172-174). Further, changed conditions were not only "reflected by a later ruling of the Board"[5] but "steadily accelerated changes" in the Company's operations were expressly found by the Board in that decision (R. 59).

Second, the certifications were fourteen, nine and five years old. The one-year certification rule can have no application.

Appellant's contention that the Company "took it on itself to disregard the existing certifications"[6] is not supported by the record. In May, 1953, the complaining union, dissatisfied with the old certifications (R. 57), chose to disregard them and petitioned for a new enlarged unit (R. 140). In March, 1954, the Board after a long hearing and careful investigation of the facts found that there had been such a change in conditions that the separation of

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[5]*National Labor Relations Bd. v. Prudential Ins. Co.* (6 Cir. 1946) 154 F.2d 385, 390, supra, p. 12.

[6]Appellant's Br., p. 19.

toll maintenance employees from other telephone maintenance employees was no longer justified for collective bargaining purposes. The complaint now seems to be, not that the Company "took it on itself to disregard," but that the Company heeded the Board's expressed views.

It is the Appellant who (like the employer in the *Prudential Insurance* case, supra) relies on an after-the-fact opinion by the Board, i.e., the Board's supplemental decision of May 14, 1954 (R. 66-68). This unusual document was released not only after the Company's alleged unlawful acts but after the filing of the complaint before the Board in the case to which this proceeding is ancillary (R. 17-25). The intent and legal effect of the supplemental decision is not clear. Is it conceivable that the Board was repudiating its express findings of March 17, 1954, without the introduction of new evidence or without motion from either party? Further, the Company has voluntarily maintained the status quo regarding recognition of collective bargaining agents as of May 11, 1954, the date of the issuance of the complaint (R. 45).

The only succor the Appellant finds in the detailed opinion of March 17th is the statement that a new toll maintenance unit " 'will not at this time ensure to employees in the Employer's plant maintenance department any fuller freedom in exercising the rights guaranteed by the Act than they now enjoy' " (Appellant's Br., pp. 8, 20). It will be noted that the reference is to rights of "employees in the Employer's *plant* maintenance department," not to rights of "toll maintenance employees" as a separate group. That the statement is an intentional reference to the over-all maintenance group appears clear

from the fact that it immediately follows the holding that "it now clearly appears that, however distinctive the skills of 'toll maintenance' and 'central office' employees may have been in early days of less developed operations, the present worth of the Employer's skilled telephone maintenance employees lies in their ability to handle highly complicated, technical, and integrated circuits and equipment however used, rather than in any special 'toll' or 'exchange' aptitudes, if any, that they may happen to possess" (R. 62-63).

The statement relied upon by Appellant is an express recognition by the Board that the right to bargain collectively as an appropriate unit is vested today in the plant maintenance employees as a group without regard to "any special 'toll' or 'exchange' aptitudes" which individual employees may have.

There is, thus, nothing in this record to support the contention, based solely on a completely rebutted and nullified presumption, that there "exists reasonable cause to believe that the existing [sic] units of toll maintenance employees continue to be appropriate" (Appellant's Br., p. 22). The Appellant, petitioner below, failed to establish any basis on which he would be entitled to an injunction.

3. AS THE UNREFUTED EVIDENCE SHOWS THE CLAIMEI BARGAINING UNITS ARE INAPPROPRIATE FOR THAT PUR POSE TODAY, THE DISTRICT COURT WAS NOT ONLY REA SONABLE IN DENYING BUT WAS COMPELLED TO DENY THE INTERLOCUTORY INJUNCTION.

In contrast to the absence of any showing by Appellan that the old units are today appropriate, the record affirmatively demonstrates that the units as previously certified are today singularly inappropriate.

The findings of the Board in its decision of March 17 1954, together with the Company's brief in the litigatio (R. 65), point out the legally fatal defects of separate tol maintenance units as applied to today's operations. The units claimed are not industrial. They are not depart mental. They are not geographical. They do not meet any of the standards established by the Board for craft unit or for units with a craft nucleus.

See:

New York Telephone Company (1952) 100 NLRB 1374;

Milprint, Inc. (1950) 90 NLRB 98;

General Electric Company (1950) 89 NLRB 726;

Teletype Corporation (1948) 79 NLRB 1044.

The "indefiniteness, indefinability, and variability" in herent in these units, as found by the Board (R. 62), alone make them inappropriate (*Reilly Electrotype Company* (1951) 94 NLRB 810).

The units do not meet any of the presently established standards of appropriateness. Nowhere in his brief does Appellant contend that they do. He argues nevertheless that "the Board will again find the ORTT units appro

priate'' because of ''the long history of established bargaining relationship'' (Appellant's Br., p. 23). This argument is in direct contravention of the holding of the Board in *Fruehauf Trailer Company* (1949) 87 NLRB 589, supra, and in *The Kroger Company* (1950) 88 NLRB 243, supra. In the latter case the Board said (p. 244):

> ''Although we place great weight on collective bargaining history, we will not make it the determinative factor in deciding the unit issue where, as here, since the date of the Intervenor's 1944 certification, a sufficiently significant change in the Employer's organization has occurred to dictate a different result. * * * bargaining history developed under conditions not now prevailing is not controlling * * *.''

Further, the Board has given weight to bargaining history only where the pattern of bargaining has been found satisfactory to the parties. After considering the years of strife over the unit question, the Board found in its March 17th decision in case 20-RC-2251 on the petition of the ORTT for an enlarged toll maintenance unit that (R. 57):

> ''The record is clear that this present pattern [of collective bargaining under the old certifications] satisfied none of the parties to this proceeding.''

Thus neither the facts nor the law supports the Appellant's argument that there is reason to believe the Board will hold the old units appropriate under today's admittedly changed conditions.[7] A study of the record and

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[7]The further argument by Appellant based on *Consolidated Vultee Aircraft Corporation* (1952) 101 NLRB 584 (Appellant's Br., pp. 22-23) that whether toll maintenance employees should

a review of the law show that the conclusion of the Distric Court to the contrary was not only reasonable but the onl proper conclusion under the circumstances.

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4. **WHEN, AS HERE, AN EMPLOYER REASONABLY RELIES O FINDINGS OF THE NATIONAL LABOR RELATIONS BOAR IN REFUSING TO RECOGNIZE A UNION AS REPRESENTA TIVE OF EMPLOYEES IN A UNIT WHICH SEEMS TO BE IN APPROPRIATE, ITS REFUSAL IS NOT A VIOLATION OF TH ACT.**

Appellant challenges the materiality of the fact "tha the Company acted in a good faith belief that the ORT units are now inappropriate for collective bargaining" (Appellant's Br., p. 30).

The Board has held exactly contrary, where, as here, th employer's good faith reliance was based on the Board' own most recent decisions.

In *Chalet, Inc.* (Nov., 1953) 107 NLRB No. 42, th National Labor Relations Board, in considering a refusal to-bargain charge under section 8(a)(5) filed against a employer, held (as reported in 33 LRRM 1071-1072):

> "On January 13, 1953, the union advised the em ployer that it represented the employer's three cutter and was seeking recognition and bargaining for th cutters. The employer replied that he was not pre pared to make a decision on such short notice and tha he wanted to discuss the matter with others.
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> * * * * *

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be in a separate or in an over-all unit must be determined by a election is based on the premise that either the separate or th over-all unit is appropriate. The facts here do not support suc an alternative. The record clearly establishes that a separat unit is not appropriate.

The following day, the employer advised the union that he would not recognize the union because it did not represent a majority of the whole shop. Thereupon, the three cutters walked out of the plant.

The employer's refusal to recognize the union on the ground that a separate unit of cutters was inappropriate was not unreasonable, even though a separate unit of cutters is appropriate. In the area where the employer's plant is located, the union did not represent a separate unit of cutters. Moreover, the NLRB in its only decisions involving clothing factories in the area found that cutters did not constitute separate appropriate units (Kohen-Ligon-Foltz, Inc. 36 NLRB 808 [9 LRRM 176]; Morten-Davis Company, 36 NLRB 804 [9 LRRM 176]; Justin McCarty, Inc., 36 NLRB 800 [9 LRRM 176]).

* * * * *

Complaint is dismissed."

In connection with the matter of good faith, Appellant cites *Republic Aviation Corp. v. Board* (1945) 324 U.S. 793, and *Radio Officers' Union v. Labor Board* (1954) 347 U.S. 17 (Appellant's Br., p. 30). These two cases are concerned with alleged discriminatory treatment of employees in violation of section 8(a)(3) not here involved. However, in the *Radio Officers' Union* case the court held that the employer's "real motive" is decisive, though specific evidence of intent is not an indispensable element of proof where intent can be inferred. Here the only intent which can possibly be inferred is the intent of the Company to follow the requirements of the statute as applied to facts and circumstances specifically found by the Board.

The two other cases cited by Appellant on this poin *May Stores Co. v. Labor Board* (1945) 326 U.S. 376, an *Jaffee v. Henry Heide, Inc.* (S.D.N.Y. 1953) 115 F.Supp 52, like so many other cases cited by Appellant, supra pp. 10-11, are concerned with a refusal to bargain withi the first certification year.

Appellant questions the Company's good faith becaus it did not "raise the unit question in appropriate proceed ings before the Board" (Appellant's Br., p. 25). Earlie in his brief Appellant refers to "the unrevoked certifica tions" (Appellant's Br., p. 17).

We find no provision in the Act for revoking a certifica tion. Nor does there seem to be a need for it under th scheme of the Act. Certifications, being based on "circum stances at a given time,"[8] after a reasonable time, usuall one year, raise only a presumption. The Act does provid for the filing of a petition for "decertification"—but suc a petition can only be filed by employees (sec. 9(c)(1); 2 U.S.C. 159(c)(1)). It is by this means that employee may challenge the recognition currently extended by a employer to a union. Further, the Board will not hold de certification elections in units which are inappropriate fo certification elections (*Lone Star Producing Compan* (1949) 85 NLRB 1137).

Under section 9(c) an employer may file a representa tion petition—alleging that a question of representatio exists and requesting an election. Presumably the Ap

[8]*Pacific Telephone and Telegraph Company* (1944) 58 NLR 1042, 1048, supra.

pellant believes the Company should have filed such a petition and then moved to dismiss it on the ground that in fact there was no substantial question of representation because the units claimed were inappropriate for bargaining. The situation would be unique.

As a matter of fact, it appeared to the Company, as we submit it would to any reasonable person, after a careful study of the Board decision of March 17, 1954, that further litigation of the appropriateness of separate toll maintenance units in its operations was wholly unnecessary. The matter seemed to be settled. Certainly the Company, after March 17, 1954, did not want to bear the responsibility of putting all parties to the inconvenience and expense of plowing again the ground which had been so completely worked.

CONCLUSION.

We submit that Appellant has failed to show an abuse of discretion by the District Court or to demonstrate that the District Court improperly denied the interlocutory injunction.

On the contrary, the record shows that in failing to prove the present appropriateness of the claimed bargaining units, the Appellant failed to present grounds for the issuance of an injunction. As the record shows that the claimed units are in fact inappropriate, and further that the Company acted in reasonable reliance upon the Board's own findings, there is no reasonable cause to believe that a violation of the Act has occurred.

We respectfully submit that the judgment of the District Court should be affirmed.

Dated, San Francisco, California,
October 11, 1954.

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